

REMARKS

This is a full and timely response to the outstanding final Office Action mailed November 19, 2002. Reconsideration and allowance of the application and presently pending claims, as amended, are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-7, 9-19, and 21-24 remain pending in the present application. It is believed that newly added claims 22-24 add no new matter to the present application.

2. Response to Rejection of Claim 21 under 35 U.S.C. 112, First Paragraph

Claim 21 has been rejected under 35 U.S.C. 112, First Paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 21 has been amended in order to overcome this rejection, and Applicants respectfully submit that pending claim 21, as amended, satisfies the requirements of 35 U.S.C. §112, First Paragraph. Accordingly, the rejection to this claim under 35 U.S.C. §112, First Paragraph, should be withdrawn.

3. Response to Rejection of Claims 1, 4, 9, 10, 11, 13, and 17 Under 35 U.S.C. § 103(a)

Claims 1, 4, 9, 10, 11, 13, and 17 have been rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable over *Boys* (U.S. Patent No. 6,314, 094). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon prior art, the prior art must disclose, teach, or suggest, either implicitly, all elements/features/steps of the

claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981). Applicant respectfully traverses all rejections.

a. Claim 1

As provided in independent claim 1, Applicant claims:

1. A method for receiving digital information and transmitting the information in a localized area, comprising the steps of:
 - receiving an audio communication as digital information from a remote source via the Internet;
 - converting the digital information to analog information;
 - broadcasting the analog information at low power in a localized area in at least one preselected radio frequency chosen by a user;*** and
 - receiving the broadcast information in the localized area on a radio frequency receiver tuned to at least one frequency to permit listening to the audio communication.

(*Emphasis Added*).

Applicant asserts that the rejection should be withdrawn because *Boys* fails to disclose or otherwise teach the step that is highlighted above. Specifically, *Boys* fails to disclose, suggest, or teach “broadcasting . . . in at least one preselected radio frequency chosen by a user,” as recited in claim 1. At most, *Boys* discloses an approach “that works with a wireless network such as a cellular network.” Col. 7, lines 47-49. Therefore, as explained in the office action, *Boys* seems to disclose an approach in which the receiver tunes to a frequency selected by a mobile telephone switching office, as generally used in a cellular network. Hence, *Boys* does not seem to involve a user selecting a radio frequency upon which a device receives an Internet broadcast. As such, *Boys* would not result in the claimed method for at least the reason that the communication approach in *Boys* does not “broadcast[] . . . in at least one preselected radio frequency chosen by a user.”

Further, as provided above, Applicant's independent claim 1 recites the step for “broadcasting analog information . . . in a localized area. In the specification, a localized area is

described as a short distance where radio signals may be transmitted without a FCC or local license requirement, *see* page 5, lines 20-21, such as a user's home. *See* page 2, lines 28-29. Accordingly, the *Boys* reference would not result in the claimed method for at least the reason that the communication approach in *Boys* does not "broadcast[] the analog information at low power in a localized area," as recited in claim 1. Rather, *Boys* suggests using cellular communications, *see* col. 4, lines 58-62, which requires FCC licensing to transmit signals in a cell or region 15, 17. Thus, the size of the cell or region 15, 17 in the *Boys* reference is not limited to a "localized area," as delineated in the specification. Since the Applicant is allowed to be his own lexicographer, the phrase "localized area" is clearly different from the *Boys* reference. Therefore, *Boys* would not result in the claimed method for at least the reason that the communication approach in *Boys* does not "broadcast[] the analog information at low power in a localized area," as recited in claim 1. Therefore, claim 1 is not obvious under the prior art of *Boys*, and the rejection should be withdrawn.

b. Claim 4

Because independent claim 1 is allowable over the prior art of record, dependent claim 4 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 4 contains all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claim 4 recites further steps and/or combinations of steps (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record. Specifically, the feature "wherein the step of broadcasting the analog information comprises broadcasting at a power level less than about 100 milliwatts," as recited in claim 4, is not taught,

disclosed, or suggested by *Boys*. At most, *Boys* suggests an approach that “works with a wireless network such as a cellular network, and a wireless modem.” Col. 7, Line 47-49. Accordingly, the approach in *Boys* apparently suggests utilizing a power transmission level greater than 100 milliwatts, since power transmissions in cellular communications are generally greater than 100 milliwatts due to the number of channels that operate at a given time at their maximum strength. Therefore, *Boys* would not result in the claimed method for at least the reason that the communication approach in *Boys* does not disclose, teach, or suggest the feature “wherein the step of broadcasting the analog information comprises broadcasting at a power level less than about 100 milliwatts,” as recited in claim 4. Therefore, claim 4 is not obvious under the prior art of *Boys*, and the rejection should be withdrawn.

c. Claims 9-10

Because independent claim 1 is allowable over the prior art of record, dependent claims 9-10 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 9-10 contain all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

d. Claim 11

As provided in independent claim 11, Applicant claims:

11. An apparatus for receiving information and broadcasting the information in a localized area, the apparatus comprising:
means for receiving digital information from a remote source via the Internet;
means for converting the digital information to analog information;
and
means for broadcasting the analog information in a localized area in at least one preselected radio frequency chosen by a user.

(*Emphasis Added*).

Applicant asserts that the rejection should be withdrawn because *Boys* fails to disclose or otherwise teach the feature that is highlighted above. Specifically, *Boys* fails to disclose, suggest, or teach “means for broadcasting the analog information . . . in at least one preselected radio frequency chosen by a user,” as recited in claim 11. At most, *Boys* discloses a system “that works with a wireless network such as a cellular network.” Col. 7, lines 47-49. Therefore, as explained in the office action, *Boys* seems to disclose a system in which the receiver tunes to a frequency selected by a mobile telephone switching office, as generally used in a cellular network. Hence, *Boys* does not seem to involve a user selecting a radio frequency upon which a device receives an Internet broadcast. As such, *Boys* would not result in the claimed system for at least the reason that the communication device in *Boys* does not “preselect[] a radio frequency chosen by a user.”

Further, as provided above, Applicant's independent claim 11 recites the feature of “means for broadcasting the analog information in a localized area.” In the specification, a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement, *see* page 5, lines 20-21, such as a user's home. *See* page 2, lines 28-29. Accordingly, the *Boys* reference would not result in the claimed system for at least the reason that the communication system in *Boys* does not “broadcast[] the analog information at low power in a localized area,” as recited in claim 11. Rather, *Boys* suggests using cellular communications, *see* col. 4, lines 58-62, which requires FCC licensing to transmit signals in a cell or region 15, 17. Thus, the size of the cell or region 15, 17 in the *Boys* reference is not limited to a “localized area,” as delineated in the specification. Since the Applicant is allowed to be his own lexicographer, the phrase “localized area” is clearly different from the *Boys* reference. Therefore, *Boys* would not

result in the claimed system for at least the reason that the communication system in *Boys* does not “broadcast[] the analog information at low power in a localized area,” as recited in claim 11. Therefore, claim 11 is not obvious under the prior art of *Boys*, and the rejection should be withdrawn.

e. Claim 13

Because independent claim 11 is allowable over the prior art of record, dependent claim 13 (which depends from independent claim 11) is allowable as a matter of law for at least the reason that dependent claim 13 contains all the elements/features of independent claim 11. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

f. Claim 17

As provided in independent claim 17, Applicant claims:

17. A method for receiving digital information and transmitting the information in a localized area, the method comprising the steps of:
receiving digital information from a remote source via the Internet;
converting the digital information to analog information;
***broadcasting the analog information in a localized area in at least one
preselected frequency modulated radio frequency chosen by a user.***

(*Emphasis Added*).

Applicant asserts that the rejection should be withdrawn because *Boys* fails to disclose or otherwise teach the step that is highlighted above. Specifically, *Boys* fails to disclose, suggest, or teach “broadcasting the analog information . . . in at least one preselected frequency modulated radio frequency chosen by a user,” as recited in claim 17. At most, *Boys* discloses an approach “that works with a wireless network such as a cellular network.” Col. 7, lines 47-49. Therefore, as explained in the office action, *Boys* seems to disclose a communication approach in which the

receiver tunes to a frequency selected by a mobile telephone switching office, as generally used in a cellular network. Hence, *Boys* does not seem to involve a user selecting a radio frequency upon which a device receives an Internet broadcast. As such, *Boys* would not result in the claimed method for at least the reason that the communication approach in *Boys* does not “broadcast[] the analog information . . . in at least one preselected frequency modulated radio frequency chosen by a user.”

Further, as provided above, Applicant's independent claim 17 recites the step for “broadcasting the analog information in a localized area.” In the specification, a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement, *see* page 5, lines 20-21, such as a user’s home. *See* page 2, lines 28-29. Accordingly, the *Boys* reference would not result in the claimed method for at least the reason that the communication approach in *Boys* does not “broadcast[] the analog information at low power in a localized area,” as recited in claim 1. Rather, *Boys* suggests using cellular communications, *see* col. 4, lines 58-62, which requires FCC licensing to transmit signals in a cell or region 15, 17. Thus, the size of the cell or region 15, 17 in the *Boys* reference is not limited to a “localized area,” as delineated in the specification. Since the Applicant is allowed to be his own lexicographer, the phrase “localized area” is clearly different from the *Boys* reference. Therefore, *Boys* would not result in the claimed method for at least the reason that the communication approach in *Boys* does not “broadcast[] the analog information at low power in a localized area,” as recited in claim 17. Therefore, claim 17 is not obvious under the prior art of *Boys*, and the rejection should be withdrawn.

5. Response to Rejection of Claims 2-3, 5-7, 12, 16, 18, and 21 Under 35 U.S.C. § 103(a)

Claims 2-3, 5-7, 12, 16, 18, and 21 have been rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable over *Boys* in view of *Lowe* (U.S. Patent No. 6,298,218). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981). Applicant respectfully traverses all rejections.

a. Claim 2

Because independent claim 1 is allowable over the prior art of record, dependent claim 2 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 2 contains all the elements/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

b. Claim 3

Because independent claim 1 is allowable over the prior art of record, dependent claim 3 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 3 contains all the elements/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claim 3 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably

distinct from the prior art of record.

The feature “wherein the broadcasting comprises broadcasting in a radio frequency modulated waveband in the ranges of from about 88 MHz to about 108 MHz and from about 540 Khz to about 1.6 MHz,” as recited in claim 3, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the prior art of *Boys* in view of *Lowe* would not result in the claimed system. Furthermore, both references teach away from broadcasting information using commercial frequency bands, such as FM or AM, for their respective systems. For example, *Lowe* states that the “[u]se of the FM band outside the commercial (88-108 MHz) range is contemplated herein so as to avoid the possibility of commercial FM radio band interference.” Col. 7, lines 1-3. Likewise, *Boys* apparently contemplates utilizing AM/FM receiving capability in order to receive conventional broadcasts and not Internet broadcasts. Col. 13, lines 45-48. Accordingly, neither *Boys* or *Lowe* contemplates broadcasting information from the Internet over the FM band and unequivocally teaches away from this feature. Hence, the prior art of *Boys* in view of *Lowe* simply would not result in Applicant’s claimed invention. Therefore, claim 3 is not obvious under the prior art of *Boys* in view of *Lowe*, and the rejection should be withdrawn.

c. Claim 5

Because independent claim 1 is allowable over the prior art of record, dependent claim 5 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that the dependent claim 5 contains all the steps/features of independent claim 1. See *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claim 5 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably

distinct from the prior art of record.

The feature “wherein the broadcasting of the analog information is initiated at a predetermined time and in a predetermined frequency,” as recited in claim 5, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the prior art of *Boys* in view of *Lowe* would not result in the claimed system. The *Lowe* reference instead teaches that the user’s presence triggers the transmission of information to a user’s headset or video display. *See* col. 3, lines 9-13; col. 4, lines 54-61. Specifically, *Lowe* seems to clearly state that data transmission is initiated by (a) a person stepping on the treadmill or coming in close proximity to a treadmill; (b) a headset coming in physical contact (or near physical contact) with the treadmill; and/or (c) pushing a button on the treadmill. *See* col. 2-3, lines 60-8. Diversely, Applicant respectfully submits that the office action cites passages from *Lowe* (col. 3, lines 20-40 and lines 55-60) that pertain to a determination of types of broadcast content and not to the initiation of broadcast content. Accordingly, *Lowe* fails to suggest, disclose, or teach the feature of initiating broadcasting at a predetermined time. Hence, the prior art of *Boys* in view of *Lowe* simply would not result in Applicant’s claimed invention, and the rejection should be withdrawn.

d. Claim 6

Because independent claim 1 is allowable over the prior art of record, dependent claim 6 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 6 contains all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

e. Claim 7

Because independent claim 1 is allowable over the prior art of record, dependent claim 7 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that dependent claim 7 contains all the steps/features of independent claim 1. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

f. Claim 12

Because independent claim 11 is allowable over the prior art of record, dependent claim 12 (which depends from independent claim 11) is allowable as a matter of law for at least the reason that dependent claim 12 contains all the elements/features of independent claim 11. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 11, dependent claim 12 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The element of “means for programming comprising a program for *setting a time to activate* the means for broadcasting,” as recited in claim 12, is not disclosed, taught, or suggested by either *Boys* or *Lowe*. Accordingly, the prior art of *Boys* in view of *Lowe* would not result in the claimed system. To the contrary, the *Lowe* reference teaches that the presence of a user triggers the transmission of information to a user’s headset or video display. *See Lowe* col. 3, lines 9-13; col. 4, lines 54-61. Specifically, *Lowe* seems to clearly state that data transmission is initiated by (a) a person stepping on the treadmill or coming in close proximity to a treadmill; (b) a headset coming in physical contact (or near physical contact) with the treadmill; and/or (c) pushing a button on the treadmill. *See* col. 2-3, lines 60-8. Diversely, Applicant respectfully

submits that the office action cites passages from *Lowe* (col. 3, lines 20-40 and lines 55-60) that pertain to a determination of types of broadcast content and not to the initiation of broadcast content. Accordingly, *Lowe* fails to suggest, disclose, or teach the feature for “*setting a time to activate* the means for broadcasting.” Hence, the prior art of *Boys* in view of *Lowe* simply would not result in Applicant’s claimed invention, and the rejection of claim 12 should be withdrawn.

g. Claims 16 and 18

Because independent claims 11 and 17 are allowable over the prior art of record, dependent claims 16 and 18 (which depend from independent claims 11 and 17 respectively) are allowable as a matter of law for at least the reason that dependent claims 16 and 18 contain all the features of independent claims 11 and 17 respectively. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

h. Claim 21

Because independent claim 17 is allowable over the prior art of record, dependent claim 21 (which depends from independent claim 17) is allowable as a matter of law for at least the reason that dependent claim 21 contains all the steps/features of independent claim 17. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for allowability of independent claim 17, dependent claim 21 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record.

The step of “broadcasting the analog information is in at least one preselected amplitude modulated radio frequency,” as recited in claim 21, is not disclosed, taught, or suggested by

either *Boys* or *Lowe*. Accordingly, the prior art of *Boys* in view of *Lowe* would not result in the claimed system. Moreover, both references teach away from broadcasting information using commercial frequency bands, such as FM or AM, for their respective systems. For example, *Lowe* specifically states that the “[u]se of the FM band outside the commercial (88-108 MHz) range is contemplated herein so as to avoid the possibility of commercial FM radio band interference.” Col. 7, lines 1-3. Likewise, *Boys* apparently contemplates utilizing AM/FM receiving capability in order to receive conventional broadcasts and not Internet broadcasts. Col. 13, lines 45-48. Accordingly, neither *Boys* or *Lowe* contemplates broadcasting information from the Internet over the FM band and unequivocally teaches away from this feature. Hence, the prior art of *Boys* in view of *Lowe* simply would not result in Applicant’s claimed invention, and the rejection of claim 21 should be withdrawn.

6. Response to Rejection of Claims 14-15 Under 35 U.S.C. § 103(a)

Claims 14-15 have been rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable over *Boys* in view of *Dao* (U.S. Patent No. 5,915,207). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

Because independent claim 11 is allowable over the prior art of record, dependent claims 14-15 (which depend from independent claim 11) are allowable as a matter of law for at least the

reason that the dependent claims 14-15 contain all the elements/features of independent claim 11.
See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

7. New Claims 22-24

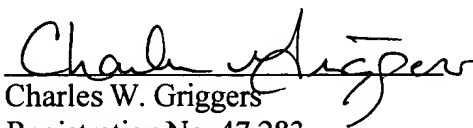
New claims 22-24 are based on subject matter that is explicit and/or inherent within the description of the specification and/or inherent within the drawings. Applicant submits that no new matter has been added in the new claims 22-24, and that new claims 22-24 are allowable over the cited prior art.

CONCLUSION

For at least the foregoing reasons, all rejections and objections have been rendered moot, accommodated, and/or traversed, and Applicant respectfully request that all outstanding rejections be withdrawn and that all pending claims 1-7, 9-19, and 21-24 of this application be allowed to issue. If the Examiner has any comments regarding Applicant's response or intends to dispose of this matter in a manner other than a notice of allowance, Applicant requests that the Examiner telephone Applicant's undersigned agent.

Respectfully submitted,

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